

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

APPROXIMATELY \$28,000 IN UNITED  
STATES CURRENCY,

Defendant.

No. 09-5377 SC

ORDER GRANTING MOTION  
FOR DEFAULT JUDGMENT

**I. INTRODUCTION**

On February 23, 2010, Plaintiff United States of America ("Plaintiff") filed a Motion for Default Judgment in this in rem action. Docket No. 9 ("Motion"). The Clerk entered Default on February 19, 2010. Docket No. 8. No opposition to the Motion has been filed. The matter is appropriate for decision without oral argument. For the reasons stated herein, the Court GRANTS Plaintiff's Motion.

**II. BACKGROUND**

On or about March 31, 2009, two Drug Enforcement Administration ("DEA") Task Force Agents were working parcel interdiction at the Federal Express (FedEx) facility in South San Francisco, when they came across a damaged FedEx box. Docket No. 1 ("Compl.") ¶ 8. The parcel contained \$28,000 in U.S. currency,

1 comprised primarily of \$20 and \$10 denominations. Id. ¶ 12. The  
2 currency was rubber-banded into bundles and vacuum heat-sealed  
3 inside of two foodsaver plastic bags. Id. ¶ 9. The airbill on  
4 the FedEx box listed David Kincaid ("Kincaid"), with an address in  
5 Alexandria, Virginia, as the sender, and Jason Chin ("Chin"), with  
6 an address in Daly City, California, as the recipient. Id. ¶ 10.

7 The DEA agents took custody of the parcel and transported it  
8 to their office at the San Francisco International Airport. Id.  
9 ¶ 11. A narcotics detection dog reacted to the parcel, indicating  
10 that an odor of narcotics was emanating from it. Id. At the time  
11 the parcel was discovered, the recipient, Chin, was on probation  
12 and had a felony drug conviction. Id. ¶ 13.

13 When contacted by the DEA agents, Chin initially advised them  
14 that the package contained a book. Id. He later explained that  
15 the money was to pay for purchase of his 2001 Ford F-150 Harley  
16 Davidson edition truck. Id. ¶ 14. Kincaid offered the same  
17 explanation. Id. ¶ 15. The Kelley Blue Book value of the truck  
18 is between \$17,000 and \$19,300. Id. ¶ 16. Although Kincaid is  
19 from the Bay Area, he told the agents he was in Virginia on  
20 business. Id. ¶ 15. Chin told agents he was currently  
21 unemployed, and the California Employment Development Department  
22 showed no employment records for Kincaid over the past two years.  
23 Id. ¶¶ 14, 17.

### 24 25 **III. LEGAL STANDARD**

26 "All moneys . . . furnished or intended to be furnished by  
27 any person in exchange for a controlled substance . . . [and] all  
28

proceeds traceable to such an exchange, and all moneys . . . used or intended to be used to facilitate any" narcotics transaction, are subject to forfeiture to the United States. 21 U.S.C. § 881(a)(6). Seizures must be made pursuant to a warrant, except that a seizure may be made without a warrant if:

(A) a complaint for forfeiture has been filed in the United States district court and the court issued an arrest warrant in rem pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims;

(B) there is probable cause to believe that the property is subject to forfeiture and--

(i) the seizure is made pursuant to a lawful arrest or search; or

(ii) another exception to the Fourth Amendment warrant requirement would apply; or

(C) the property was lawfully seized by a State or local law enforcement agency and transferred to a Federal agency.

18 U.S.C. § 981(b)(2). In addition to the Supplemental Rules,<sup>1</sup> Plaintiff must also comply with the Admiralty and Maritime Local Rules for the Northern District of California. See Admir. L.R. 1-2 ("These admiralty local rules apply only to civil proceedings that are governed by the Supplemental Rules . . . [including] statutory . . . forfeiture proceedings analogous to maritime actions *in rem*")(italics in original). Where the Government seeks forfeiture of currency, the Court should determine whether plaintiff has met the specific procedural requirements governing

---

<sup>1</sup> Although both 18 U.S.C. § 981(b)(2) and the Northern District's Local Admiralty Rules refers to the Supplemental Rules as "the Supplemental Rules for Certain Admiralty and Maritime Claims," the 2010 edition of the Federal Rules of Civil Procedure refers to them as the "Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions." The Local Admiralty Rules cite to the Supplemental Rules using the abbreviation "FRCivP Supp" and this Court will do so as well.

1 forfeiture actions. United States v. Approximately \$72,000 in  
2 U.S. Currency, No. 08-1305, 2009 WL 506866, at \*3-4 (N.D. Cal.  
3 Feb. 27 2009).

4 After entry of default, the Court may enter a default  
5 judgment. Fed. R. Civ. P. 55(b)(2). The Court's decision whether  
6 to enter a default judgment, while "discretionary," Aldabe v.  
7 Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980), is guided by several  
8 factors. If the court determines service of process was  
9 sufficient, the court may consider:

10 (1) the possibility of prejudice to the  
11 plaintiff, (2) the merits of plaintiff's  
12 substantive claim, (3) the sufficiency of the  
13 complaint, (4) the sum of money at stake in the  
14 action, (5) the possibility of a dispute  
15 concerning material facts, (6) whether the  
16 default was due to excusable neglect, and (7)  
17 the strong policy underlying the Federal Rules  
18 of Civil Procedure favoring decisions on the  
19 merits.

20 Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). "The  
21 general rule of law is that upon default the factual allegations  
22 of the complaint, except those relating to the amount of damages,  
23 will be taken as true." Geddes v. United Fin. Group, 559 F.2d  
24 557, 560 (9th Cir. 1977).

#### 25 **IV. DISCUSSION**

##### 26 **A. The Supplemental Rules**

27 A forfeiture action in rem arising from a federal statute is  
28 governed by Rule G of the Supplemental Rules. See FRCivP Supp  
G(1). The plaintiff must file a verified complaint that states  
the grounds for jurisdiction and venue, that describes the

property being forfeited, that identifies the statute under which the forfeiture action is brought, and that includes sufficient factual detail to support a reasonable belief that the government will be able to meet its burden of proof at trial. Id. G(2)(a)-(f). The clerk must issue a warrant to arrest the property if it is in the government's possession, custody, or control. Id. G(3)(b)(i). The government must publish notice of the action which, among other requirements, must state the time to file a claim and answer. Id. G(4)(a)(ii)(B). One means of notice by publication is posting a notice on an official internet government forfeiture site for at least thirty consecutive days. Id. G(4)(a)(iv)(C). The government must also send notice of the action to any person who reasonably appears to be a potential claimant. Id. G(4)(b)(i). "Notice to a person from whom property was seized who is not incarcerated when notice is sent may be sent to the last address that person gave to the agency that seized the property." Id. G(4)(b)(iii)(E).

**B. The Admiralty Local Rules**

A party seeking a default judgment in an action in rem must show that due notice of the action and arrest has been given "[i]n actions subject to FRCivP Supp G: (i) Through execution of process in accordance with FRCivP Supp G(3); and (ii) In accordance with FRCivP Supp G(4)." Admir. L.R. 6-1(a)(1). Persons with recorded interests must be notified in accordance with FRCivP Supp G(4). Id. 6-1(b)(1). Before the Court can enter a default judgment, the government must show that "(1) Notice has been given as required by Admir. L.R. 6-1(a)(1)and (b)(1); ( 2) No

1 one has filed timely and responsive pleadings pursuant to  
2 the requirements of FRCivP Supp G(5)." Id. 6-2(a).

3 **C. Compliance with the Rules**

4 Here, Plaintiff filed a verified Complaint for forfeiture  
5 that states the Court has jurisdiction under 28 U.S.C. §§ 1345 and  
6 1355(a). Compl. ¶ 1. 28 U.S.C. § 1345 vests district courts with  
7 original jurisdiction of "all civil actions, suits or proceedings  
8 commenced by the United States." 28 U.S.C. § 1355(a) vests  
9 district courts with original jurisdiction in "any action or  
10 proceeding for the . . . enforcement of any . . . forfeiture . . .  
11 incurred under any Act of Congress." Venue in the Northern  
12 District of California is proper because the money was seized in  
13 San Mateo County. Compl. ¶ 3.

14 This action is being brought under 18 U.S.C. § 881(a)(6),  
15 which provides for forfeiture of money furnished or intended to be  
16 furnished in exchange for a controlled substance, or traceable to  
17 such an exchange, or used to facilitate a narcotics transaction.  
18 Id. ¶ 1. The Complaint contains sufficient factual detail to  
19 support a determination that the \$28,000 was traceable to, or used  
20 to facilitate, a narcotics transaction because: (1) a narcotics  
21 detection dog reacted to the parcel, id. ¶ 11; (2) the parcel's  
22 packaging indicated that efforts were made to conceal its  
23 contents, id. ¶ 9; (3) the parcel's intended recipient, Chin, was  
24 on probation and had a felony drug conviction, id. ¶ 13; (4)  
25 Chin's explanation that the money was for the sale of a truck was  
26 not plausible, id. ¶¶ 14, 16; and (5) there were no employment  
27 records for the parcel's sender in the preceding two years, id.

¶ 17. Also, the money was packaged in small denominations, id ¶ 12, which is consistent with criminal activity. See United States v. Approximately \$17,872 In U.S. Currency, No. 08-3346, 2009 WL 2990496, at \*3 (N.D. Cal. Sept. 11, 2009) (use of small denominations contributes to finding of probable cause that money connected to illegal activity). Based on these factual allegations in the Complaint, there is probable cause to believe that the money is subject to forfeiture. See 18 U.S.C. § 981(b)(2)(B).

The Court issued an arrest warrant on November 19, 2009. See Docket No. 13 ("Warrant of Arrest"). Notice of the forfeiture was posted on an official government internet website, [www.forfeiture.gov](http://www.forfeiture.gov), for at least thirty consecutive days, beginning November 18, 2009. See Docket No. 5 ("Decl. of Publication"). The United States gave notice to all known parties who might have an interest in the money, including Chin, Kincaid, and legal counsel, Nina Wilder. See Docket Nos. 4 ("Certificate of Service"), 7 ("Am. Req. to Clerk to Enter Default"). Despite providing proper notice, no one has appeared to file a claim or answer, and the time for a responsive filing has expired. Mot. at 3. Also, no one has filed an opposition to this motion for default judgment. Id.

**D. Compliance with the Eitel Factors**

Accepting the allegations in the Complaint as true, the Court finds that the Eitel factors favor default judgment. If the Court were to refuse to grant default judgment, Plaintiff would be prejudiced -- the Government would have to expend further time and

1 effort in an action that has no opposing party. Plaintiff's claim  
2 that the money is traceable to, or was used to facilitate, a  
3 narcotics transaction, has merit. Plaintiff provided adequate  
4 notice to interested parties, as required by the supplemental and  
5 local rules. The sum of money at stake, \$28,000, though not  
6 insubstantial, is not large enough to warrant denial of the  
7 motion. See United States v. Approximately \$72,000 in U.S.  
8 Currency, 2009 WL 506866, at \*4 (finding \$72,000 not large enough  
9 to warrant denial of motion for default judgment). No claim or  
10 answer has been filed, and there is no evidence to suggest  
11 excusable neglect on the part of any potential claimant. Although  
12 it is preferable to decide a case on the merits, when there is no  
13 opposing party, a decision on the merits is "impractical, if not  
14 impossible." United States v. Approximately \$17,872 In U.S.  
15 Currency, 2009 WL 2990496, at \*4 (quoting PepsiCo, Inc. v. Cal.  
16 Sec. Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002)).

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///



